

N.D.A.G. Letter to Marion (June 2, 1986)

June 2, 1986

Mr. James L. Marion
Chief Parole Officer
Department of Parole and Probation
P.O. Box 5521
Bismarck, ND 58502-5521

Dear Mr. Marion:

Thank you for your letter dated May 21, 1986.

You have stated that an individual has made an application to the Pardon Board to have his 1979 conviction expunged. Prior to placing this application upon the Pardon Board's calendar for consideration, you have inquired as to whether or not N.D.C.C. §12-53-18 is applicable to suspended executions of sentence which would permit the applicant to request that the court allow the withdrawal of his guilty plea and then dismiss the information.

In a recent case before the Southeast Judicial District Court in Richland County, Judge Eckert was presented with the issue as to whether or not N.D.C.C. §12-53-18 applies to a suspended execution of sentence as well as a deferred imposition of sentence. Judge Eckert found it unnecessary to resolve this question in that specific case. However, this office did participate in that action as an amicus curiae.

You will find enclosed with this letter a copy of the brief and exhibits submitted to Judge Eckert in the Richland County case.

I agree with the conclusion submitted in that brief that N.D.C.C. §12-53-18 applies to a deferred imposition of sentence and not to a suspended execution of sentence. As a result of this conclusion, a person whose execution of sentence has been suspended may not request that his plea or finding of guilt be withdrawn and the information or complaint be dismissed upon completion of his or her probationary period.

I hope that I have adequately responded to your inquiry.

Sincerely,

Nicholas J. Spaeth

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Enclosure